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PATENT

Attorney Docket No. 5725.0134-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Christine DUPUIS

Serial No.: 09/172,853

Filed: October 15, 1998

For: COSMETIC COMPOSITION
WITH A FIXING AND/OR
CONDITIONING POLYMER
CONTAINING A SPECIFIC
ACRYLIC COPOLYMER



Group Art Unit: 1617

Examiner: E. Webman

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

**RESPONSE TO ELECTION OF SPECIES
REQUIREMENT UNDER 35 U.S.C. § 121**

In the Office Action mailed October 28, 1999, the Examiner has requested that an election of species under 35 U.S.C. § 121 be made among the following groups of claims:

Group a - Claims 25-33, drawn to a composition comprising an
"acrylates" copolymer and an amphoteric polymer;

Group b - Claims 34-42 and 63, drawn to a composition comprising an
"acrylates" copolymer and an ionic polymer; and

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Group c

- Claims 43-62 and 64-67, drawn to a composition comprising an "acrylates" copolymer and a non-ionic polymer.

The Examiner also stated that if Group b is elected, a further election must be made between the following two groups of claims:

Group d - claims 34-42, drawn to compositions where the anionic polymer is an ethyl ester of PVM/MA polymer; and

Group e - claim 63, drawn to compositions where the anionic polymer is a mono-esterified maleic anhydride/methyl vinyl ether copolymer.

Applicant notes that the Examiner did not refer to claims 34 and 67 and did not include claims 34-38 in either of Groups d or e. In a conference call on November 4, 1999, however, the Examiner informed the undersigned that claim 34 should be assigned to Group b and claim 67 to Group c. Furthermore, claims 34-38 should be also included in Group d, as has been indicated above.

Applicant respectfully traverses the election requirement. First, the Examiner has incorrectly classified claims 43-62 and 64-67 in Group c; these claims

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recite polymers which are ionic, not non-ionic. Accordingly, at best, the election requirement should be between two of the Examiner-defined sets of claims, Group a (amphoteric polymers) and Group b (ionic polymers), wherein the claims of Group c are reassigned to Group b. However, Applicant further submits that the election requirement should be withdrawn altogether. A requirement for restriction is proper when (1) the inventions as claimed are distinct and (2) a serious burden is placed on the Examiner if restriction is not required. M.P.E.P. § 803. Examiners must provide reasons and/or examples to support conclusions. M.P.E.P. § 803. In the present application, the Examiner has not provided reasons why the inventions as claimed are either independent or distinct, but rather has provided only a mere statement of conclusion. See M.P.E.P. § 808. In addition, the Examiner has not provided any reasons why the examination of all of the claims is a serious burden.

Therefore, Applicant respectfully requests that the election requirement be withdrawn. However, to be fully responsive to the requirement, Applicants provisionally elect, with traverse, the claims of Group c, i.e., claims 43-62 and 64-67.

CONCLUSION


In view of the foregoing remarks, Applicant respectfully requests withdrawal of the election requirement and the examination of all the pending claims together.

As this response is not filed within the shortened statutory period, a one-month

extension of time is requested. A Petition for Extension of Time for one month, along with the appropriate fee, is filed herewith. Please grant any additional extensions of time required to enter this Response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW
GARRETT & DUNNER, L.L.P.

By: 
Edna Vassilovski
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Date: December 22, 1999